



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0437]**

**RIN 1625-AA08**

**Special Local Regulations, Upper Mississippi River, Mile Markers 839 to 840 St.**

**Paul, MN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a temporary Special Local Regulation for the navigable waters of the Upper Mississippi River between mile marker (MM) 839 and MM 840 in St. Paul, MN on September 7, 2019 in order to provide for the safety of life on these waters during a Red Bull Flugtag event. This proposed rulemaking would prohibit persons and vessels from entering and operating between MM 839 and MM 840 of the Upper Mississippi River during the event unless authorized by the Captain of the Port Upper Mississippi River (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-

0437 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560, email [Christian.J.Barger@uscg.mil](mailto:Christian.J.Barger@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

On May 15, 2019, Red Bull North America notified the Coast Guard that it will be holding a Red Bull Flugtag event on the Upper Mississippi River at Harriett Island Park in St. Paul, MN from 11 a.m. to 4 p.m. on September 7, 2019. Flugtag is a homemade, non-powered flying machine competition. Contestants launch their machines from a 22 feet high platform built over the Upper Mississippi River. Potential hazards from this event include the temporary installation of a structure along the right descending bank of the river, temporary channel obstructions until the Flugtag machines are recovered from the river, and the presence of debris and persons in the water within the event perimeter. The Captain of the Port Sector Upper Mississippi River (COTP) has

determined that the potential hazards associated with the event would be a safety concern for persons and vessels in proximity of the event area. The purpose of this rulemaking is to ensure the safety of persons and vessels on these navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP proposes to establish Special Local Regulations from 10 a.m. to 5 p.m. on September 7, 2019. The Special Local Regulations would be in effect for all navigable waters of the Upper Mississippi River between Mile Marker (MM) 839 and MM 840. The duration of the zone is intended to ensure the safety of vessels and these waters before, during, and after the scheduled 11 a.m. to 4 p.m. competition. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to

control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed rule. The safety zone would restrict navigation on a one mile stretch of the Mississippi River from MM 839 to MM 840 for seven hours on one day. Additionally, this regulatory action will permit persons and vessels to seek permission to enter the regulated area from the COTP on a case-by-case basis.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies

and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this

proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of Special Local Regulations from 10 a.m. to 5 p.m. on September 7, 2019. The Special Local Regulations would be effective on all navigable waters of the Upper Mississippi River between MM 839 and MM 840. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may

lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be

viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,  
Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1

2. Add § 100.T08- 0437 to read as follows:

#### **§ 100.T08-0437 Special Local Regulations; Upper Mississippi River, Mile Markers 839 to 840 St. Paul, MN**

- (a) Location. The following Special Local Regulations are in effect for all navigable waters of the Upper Mississippi River between mile marker (MM) 839 and MM 840.
- (b) Period of enforcement. This section will be enforced from 10 a.m. through 5 p.m. on September 7, 2019.
- (c) Regulations. (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be



contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

- (2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Sector Upper Mississippi River, to patrol the event.
- (3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.
- (4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.
- (5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.
- (6) Any spectator vessel may anchor outside the regulated area specified in Table 1 of this section, but may not anchor in, block, or loiter in a navigable channel.

- (7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.
- (8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

**S. A. STOERMER,**

*CAPTAIN, U.S. Coast Guard,*

*Captain of the Port Sector Upper Mississippi River.*

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